IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2469 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINAYBHAI P.PATEL CHAIRMAN - Petitioner(s)
Versus
STATE OF GUJARAT THR' CHIEF CONTROLLING REVENUE & 1 - Respondent(s)

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Appearance :
MR BHARAT R PANDYA for Petitioner(s) : 1,
MR KL PANDYA, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 20/06/2006

CAV JUDGMENT

This petition has been preferred against the order dated 21st June,2004 passed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad (Annexure "A"

to the memo of the petition) under the provision of Section 32(A) of the Bombay Stamp Act,1958. (hereianfter referred to as “the Act,1958”).

2. Learned advocate for the petitioner submitted that the order dated 21st June,2004 passed by Deputy Collector, Stamp Duty Valuation, Ahmedabad is patently dehors the provisions of the Bombay Stamp (Determination of Market Value of property) Rules,1984 (hereinafter referred to as “the Rules,1984”). No opportunity of hearing has ever been given to the petitioner and ex-parte order has been passed as well as the order is a non-speaking order. The document i.e. Conveyance deed was registered on 19th September,1994 at the office of Sub-Registrar, Ahmedabad vide registration No.2339, whereas the so called Notice is alleged to have been given beyond the period of 7 years and, therefore, as per section 32A(4) of The Bombay Stamp Act,1958 (hereinafter referred to as “the Act,1958”), the respondent has no power, jurisdiction and authority to issue such type of Notice and, hence, the impugned order deserves to be quashed and set aside. In fact, after approximately 7 years of the date of registration of the document, the alleged notice appear to have been given. The petitioner has purchased the land for Rs.41,01,975/-, whereas the

respondent has fixed the market price of the land in question at Rs.58,45,359/-. Thus, excessively exorbitant fixation of price and that too, without giving any opportunity of being heard to the petitioner, by passing a cyclostyled non-speaking order, is palpably arbitrary usage of power and, hence, the impugned order dated 21st June,2004 (Annexure "A" to the memo of the petition) deserves to be quashed and set aside. The respondent no.2 has not given any basis for fixation of higher market value than what is referred in the conveyance deed.

3. Learned Assistant Government Pleader Mr.K.L.Pandya for the respondents submitted that the order passed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad is true, correct and in consonance with the facts of the present case. The market value of the land in question arrived at Rs.58,45,359/- has been fixed by respondent authority. No Appeal has been preferred against the said order and, therefore, this Court may not interfere with the order, which are at Annexure "A" to the memo of the petition.

4. Having heard the learned counsel for both the sides and looking to the facts and circumstances of the case, in my opinion, order dated 21st June,2004 passed by

respondent No.2 – Deputy Collector, Stamp Duty Valuation, Ahmedabad (Annexure "A" to the memo of the petition) and deserves to be quashed and set aside, mainly for the following facts and reasons:-

(i) The impugned order dated 21st June,2004 passed by respondent No.2, is a non-speaking order. No reasons have been assigned for arrived at the market value of Rs.58,45,359/- instead of Rs.41,01,975/-, for which, the conveyance deed was executed. The figure of market value cannot come in the mind of respondent No.2 from heaven or sky. There must be some basis. No such basis or calculation has been given for arriving at double market value than the conveyance deed which was entered into by the petitioner. Looking to the nature of the order, which is at “A” to the memo of the petition, it is apparent that only 'one line reasoning' has been referred to the effect that “the petitioner could not produce any evidence”. By no stretch of imagination, this can be said to be a reasoned order. Burden of proof is upon respondent. “Burden of proof lies upon him who affirms; and not upon him, who denies”. It is the say of respondent authority that deed of conveyance is revealing lesser market value. It is the respondents, who are fixing higher market value. Therefore respondent has to

justify their fixation of higher market value. Respondents cannot throw their burden, upon petitioner. Such type of reasoning tantamounts to arbitrariness. Arbitrariness and equality are sworn enemies of each other. When arbitrariness is present, equality is always absent and where, equality is present, arbitrariness is always absent. Looking to the nature of order dated 21st June,2004, it seems that only one line reasoning is given that the grievances raised by the petitioner are not acceptable. No reasons worth the name have been assigned for arriving at the market value of the land in question at Rs.58,45,359/-. It is the duty of respondent No.2 to justify such a higher market value because it is their say that the market value of the land in question is at Rs.58,45,359/-. Thus, the impugned order at Annexure "A" is a non-speaking order.

(ii) In a cyclostyled format, the impugned order has been passed, wherein some gaps have been filled in and one and two sentences have been added. Such type of orders are violative of principle of natural justice. This Court has time and again delivered judgments and has quashed and set aside, stereotyped orders passed by respondent No.2. Learned advocate for the petitioner has also relied upon the judgment dated 11th August,2003

delivered by this Court in **Special Civil Application No.4434 of 2003** and also a decision dated 3rd April,2002 rendered by this Court in the case of **Pradhyumanbhai Mohanlal Patel V/s. State of Gujarat** reported in **2003(1) GLR 454**. Learned advocate for the petitioner has also relied upon the judgment dated 22nd February,2005 delivered by Division Bench of this Court in **Letters Patent Appeal No.109 of 2005 in Special Civil Application No.16787 of 2004** as well as the order dated 10th October,2005 passed by this Court in **Special Civil Application No.13729 of 2005 along with other group of matters** and has pointed out that the order dated 21st June,2004 passed by respondent No.2 (Annexure "A" to the memo of the petition) deserves to be quashed and set aside. Looking to the impugned order and comparing it with the facts of the present case, I am also of the opinion that the impugned order is a non-speaking order since no reasons have been assigned for fixing the market value at Rs.58,45,359/-. The order dated 21st June,2004 (at Annexure "A" of memo of the petition) is a cyclostyled order, in which blanks have been filled in. No reasons have been assigned for filling in those blanks.

(iii) As per the Bombay Stamp (Determination of Market

Value of property) Rules,1984, it is the duty of the Collector to provide the basis, on which, the true market value of the property and proper duty payable thereon has been provisionally determined by him. Rule 4 of the Rules,1984, reads as under:-

> **"4. Procedure to be followed by the Collector for determining the true market value of the property which is the subject matter of the instrument:-**
>
> "4(i) on receipt of the instrument under sub-section (3) of Section 31 or sub-section (1) of section 31-A, the Collector of the District, where the thinks fit to do so, may for the purpose of his inquiry:-
>
> (a) call for any information or record having bearing, on the question before him from any public office, officer or authority under the Central Government, State Government or any local authority;
>
> (b) examine and record statement from any member of the public officer or the authority under the Central Government or State Government or any local authority, and
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> (c) inspect or empower any officer under him to inspect the property after due notice to the parties concerned.
>
> (2) <u>After examining the said information, records and evidence, if any, before him Collector of the District shall issue a notice showing the basis on which true market value of property and proper duty payable thereon has been provisionally determined by him,</u> to every person to whom according to the

> provisions of Section 30 is liable to pay stamp duty in respect of such instrument requiring such person to submit within 15 days from the date of the service of the notice upon such person, his representation in writing along with all the evidence in support of such representation.
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> (3) The Collector of the District shall after considering the representation, if any, received by him under sub-rule (2) pass an order determining the true market value and the proper payable on the instrument."
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> (emphasis supplied)

In view of the aforesaid provision, the basis for arriving at the market value ought to have been pointed out to the petitioner. Similarly, it is also the duty of the Collector to pass an order determining the true market value and proper duty payable on the instrument. Looking to the facts of the present case, no such basis has been provided for arriving at the market value nor there is any reflection of the basis of the market value fixed by the Collector in the impugned order dated 21st June,2004. Reasons always reflect the application of mind of the lower authority. "Reasons" is the soul of the order. If the order is without reasons, the appellate authority cannot appreciate the order passed by the lower authority. Reason keeps arbitrariness away.

(iv) The document for the land in question was registered before the office of Sub-Registrar, Ahmedabad on 19th September,1994 vide registration No.2339. It appears from the fact of the case that the alleged Notice has been issued on 18th December,2001. This is violative of sub-section (4) of section 32A of the Bombay Stamp Act,1958. Sub-section (4) of section 32A of the Bombay Stamp Act,1958, reads as under:-

> *32A(4) The Collector of the district may, suo motu or on receipt of information from any source, within six years from the date of registration of any instrument referred to in sub-section(1), (not being the instrument upon which an endorsement has been made under section 32 or the instrument in respect of which the proper duty has been determined by him under sub-section (3) or an instrument executed before the date of the commencement of the Bombay Stamp (Gujarat Amendment) Act,1982) (Guj.21 of 1982) call for examine the instrument for the purpose of satisfying himself as to the correctness of the consideration or of the market value of the property which is the subject matter of such instrument and the duty payable thereon; and if on such examination, he has reason to believe that the consideration does not approximate to the market value of such property or, as the case may be, market value of such property has not been truly and fully set forth in the instrument, he shall proceed as provided in sub-sections (2) and (3).*

It appears from the facts of the case that at a much belated stage and beyond the period of limitation,

as per sub-section (4) of section 32A of the Act,1958, the alleged Notice has been issued on 18th December,2001.

(v) The price of the disputed land has been fixed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad at Rs.58,45,359/-, against the sale consideration of Rs.41,01,975/- given by the petitioner, as per conveyance deed. Thus, higher market valuation has been proposed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad vide impugned notice dated 18th December,2001. In fact, as refereed hereianbove, there are separate Rules, knows as “Bombay Stamp (Determination of Market Value of property) Rules,1984”, which prescribes, (as per Rule 4), the procedure of determination of the true market value. Rule 8 prescribes, the principles, to be taken into consideration for determination of market value. The price fixation ought to be based upon principles referred in Rule 8 of the Rules,1984. Rule 8 of Rules,1984, reads as under:-

> **8. Principles to be taken into consideration for determination of market value:** The Collector of the District shall while determining the true market value of a property which is the subject matter of an instrument take into consideration primarily the capitalized value of the property i.e. the amount of money whose annual interest at the highest prevailing interest at any given time is its net annual income, and also the following factors, namely:-

(a) in the case of agricultural land, --

(i) classification of land under the provisions of the Bombay Land Revenue Code,1879;
(ii) the rate of the land revenue;
(iii) the nature of crops raised on the land;
(iv) average yeild from the land, its nearness to road and market its distance from village site road to land, facilities available for irrigation and also for transport of procedure of such land;
(v) value of adjacent land or land in vicinity;
(vi) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;
(vii) any other factor which the Collector of the District thinks to have a bearing on the valuation of the land;

(b) in the case of non-agricultural land,--

(i) the general value of non-agricultural land in the vicinity;
(ii) facilities such as road, railway station, bus route, shops, market and the like available in the vicinity of the land;
(iii) amenities like public offices, hospitals and educational institutions available in the vicinity of the land;
(iv) development activities including, Development of industries in the vicinity of the land;
(v) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;
(vi) any other factor which the Collector of the District thinks, to have a bearing on the valuation of the non-agricultural land;

(c) in the case of buildings,--
(i) the area of construction;
(ii) the floor space index;
(iii) type and structure;
(iv) year of construction;
(v) kind of material used;

(vi) locality in which constructed;
(vii) rate of depreciation;
(viii) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;
(ix) any other factor which the Collector of the District thinks to have a bearing on the valuation of the building;

(d) in the case of any other property,--
(i) the nature and condition of the property;
(ii) purpose for which the property is being put to use;
(iii) any factors mentioned in the instrument which is relevant for the purpose of determination of true market value;
(iv) any other factor which the Collector of the District thinks to have a bearing on the valuation of the property.

It appears from the facts of the case that no procedure has been followed by the Deputy Collector for fixing the market value as per the Rules,1984. The document, which has been relied upon by the respondent authority has never been supplied to the petitioner. The respondent authority has also to bear in mind that whenever they are relying upon any document, the copy thereof ought to be supplied to the petitioner. Otherwise, the petitioner cannot know what is to be replied.

5. As a cumulative effect of the aforesaid facts and circumstances of the case and looking to the judicial

pronouncements, referred hereinabove, the order dated 21st June,2004 passed by the Deputy Collector, Stamp Duty Valuation, Ahmedabad is hereby quashed and set aside (Annexure "A" to the memo of the petition) Rule made absolute to the aforesaid extent with no order as to costs.

(D.N.PATEL,J)

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